

The Case of the Mayor and Commonalty and
Citizens of the City of London, Trustees for the
Orphans and other Creditors of the said City, } Respondents

To the Appeal of Richard Richmond,
and Peter Delanoy, } Appellants,

In the House of Lords.

BY the Statute of 35 H. 8. the City of London is entitled to the Springs of Water within five Miles of London, with Power, by Pipes or otherwise, to bring the Water to the City for Publick Use.

By the Act for Relief of the Orphans, the Benefit of those Waters is vested in the City in Trust for the Orphans, and is part of the Fund out of which they are to be paid.

The City, for the Benefit of the Orphans, pursuant to their Trust, on the 19th of June 1694. in consideration of 2650 l. Fine, and 700 l. for the first Years Rent paid in hand, made a Lease of the Springs and Waters therein mentioned, to Thomas Houghton for 52 years; paying the first two Years a Pepper-Corn only, and for the residue of the Term 700 l. per Annum. In which Lease are contained many special and particular Agreements for supplying the several Conduits, Prisons, and other publick Places of the City, with Water gratis.

Thomas Houghton was (as it doth since appear) but an Agent therein for the Appellants; and Houghton, the same day the Lease bears date, assigned it to the Appellants, and they entred upon the Premises, and received the Profits thereof.

The Rent being much in Arrear, the Respondents, pursuant to their Trust aforesaid, sued Thomas Houghton at Common-Law, and the Appellants thereupon exhibited their Bill in Chancery, and obtained an Injunction, whereby that Action at Law was stopped. And the Appellants in their said Bill disclosed, That the said Lease was assigned to them, and that other Persons were concerned therein; whereupon the Respondents were forced to sue in Equity, and there to follow the Appellants; and by the Answer of the Appellants, discovered that it was turned into a Stock-jobbing business, and daily transferred from one to another: And though it was in the said Court of Chancery ordered by consent, that both Causes should come on together, yet the Appellants would not bring on their Cause to hearing.

On the 8th of July, 13 Gul. the Respondents Cause was heard; and it was decreed, That the Appellants should pay to the Respondents all Arrears of Rent then due, or which then should grow due, so long as they had held or should hold the said Premises; and it was referred to a Master to ascertain the Arrears of the said Rent.

30 January, 1701. The Master reported 3500 l. to be due from the Appellants to the Respondents at Lady-day 1701. And that on the 26th of September the Appellants assigned the said Lease to one Pollard, and on the 27th gave Notice thereof to the Respondents.

Note, The City are likely to be defrauded of their Rent from the time of the Assignment.

Against which Decree they now Appeal, and for Cause insist,

Object. 1. That the Plaintiffs Demand for Rent was not proper in Equity, but only at the Common Law.

Answer. The Respondents did at first bring their Action at Law, but were stopped therein by the Appellants Injunction, and were by them forced into Equity: And now, after a Decree, the Appellants object against the Court of Equity as an improper Court; and as this Case is, the Respondents could not recover at Law.

Object. 2. That though Houghton the Lessee had assigned all his Interest to the Appellants, yet he ought to have been brought to hearing, but was not.

Answer. Houghton absconded long before the hearing; and the same day the Lease was made to him, assigned it to the Appellants, who received the Profits, and have divided it into 900 Shares in the way of Stock-jobbing; and by so doing have got great Sums of Money of many People: Yet they would now avoid the Rent decreed, because all those People who have been concerned therein were not brought to hearing; which in Fact can never be done, and would render it impossible for the Respondents ever to recover.

Object. 3. That the Appellants Bill ought not to have been dismissed against the other Defendants, for that they ought to contribute to pay the Arrears of Rent.

Answer. The City could neither in Law or Equity compel them to be Contributors to the said Arrear; (1.) Because the Appellants only are Tenants to the Respondents, and stand in Houghton's place as his Assignees; (2.) The other Defendants claim under the Appellants only, and not as Tenants to the Respondents; and the Appellants may take their Course to make their Under-Tenants Contributors to them as they think fit, if they ought so to be.

Object. 4. They that would have Equity, must do Equity; and therefore the Respondents ought to make Allowances for the deficiency of Water.

Answer. The City did demise to Houghton the several Springs and Waters in the Lease mentioned, with the Benefit of the Pipes then laying by one Aldersay, but never contracted for any certain quantity of Water; and the Appellants have Remedy against those that unlawfully hinder their Enjoyment of what was granted to them. But this pretence was the Foundation of the Appellants own Bill against the Respondents, and they would have been proper for Relief upon that Bill, if there had been any just ground of Complaint. But they never thought fit to bring that Cause to hearing, or to bring any Action against any persons for detaining the Water from them: And the City not granting any certain quantity of Water, there does not appear to be any deficiency of what they have demised.

Object. 5. That if the Appellants may be charged with the Rent, it ought to have been only out of the Profits and Stocks raised by the Appellants Deed of Trust.

Answer. The Assignees only have the Estate in them; and what Deeds they afterwards made, or what Trust was by them created, no way concerns the Respondents, but themselves only, and the Respondents are no Parties to those Deeds, and no way affected by them.

Upon the whole matter, 'tis plain (as it is humbly conceived) that the Respondents have proceeded regularly in obtaining the said Decree, and that the Appellants have used all possible delays to avoid payment of the Rent: And there not appearing any irregularity in obtaining the said Decree, which was made upon full Evidence, and a long and deliberate hearing of Council on all sides, therefore

'Tis humbly hoped that the said Decree shall be affirmed with Costs.

T. Powys.
W. Cowper.